

Amendment No. 1 to SB1362

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1362*

House Bill No. 1293

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Child Protection Act".

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended to add the following new, appropriately designated section:

39-13-533.

(a) As used in this section:

(1) "Sexual abuse of a child" means to commit an act upon a minor child that is a violation of:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-527;

(F) § 39-13-529(a);

(G) § 39-13-531; or

(H) § 39-13-532.

(2) "Multiple acts of sexual abuse of a child" means:

(A) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions, provided that

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at least one such incident occurred within the county in which the charge is filed and that one (1) such incident occurred after July 1, 2013.

(B) Engaging in at least one incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions, provided that at least one such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2013; or

(C) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions provided that at least one (1) such incident occurred within the county in which the charge is filed and that one such incident occurred on or after July 1, 2013; and

(D) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (2)(D) include, but are not limited to:

(i) The victims are related to the defendant by blood or marriage;

(ii) The victims reside with the defendant; or

(iii) The defendant was an authority figure, as defined in §

39-13-527(a)(3), to the victims and the victims knew each other.

(b) A person commits continuous sexual abuse of a child who:

(1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(2)(A) or (B); or

(2) Over a period of less than ninety (90) days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(2)(C).

(c)

(1) A violation of subsection (b) is a Class A felony if at least three (3) of the acts of sexual abuse of a child constitute a violation of the following:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) §39-13-522;

(E) §, 39-13-529(a); or

(F) § 39-13-531.

(2) A violation of subsection (b) is a Class B felony if at least three (3) of the acts of sexual abuse of a child constitute a violation of the following:

(A) § 39-13-527; or

(B) §39-13-532.

(3) A violation of subsection (b) is a Class B felony if there are less than three (3) acts of sexual abuse of a child under subsection (c)(1) but there are at least three (3) acts under any combination of subsection (c)(1) and (c)(2).

(d) At least thirty (30) days prior to trial, the state shall file with the court a written notice identifying the multiple acts of sexual abuse of a child upon which the violation of this section is based. The notice shall include the identity of the victim and the statutory offense violated. Upon good cause, and where the defendant was unaware of the predicate offenses listed in the notice, the trial court may grant a continuance to facilitate proper notification of the incidents of sexual abuse of a child and for preparation by the defense of such incidents specified in the statement.

(e) The jury must agree unanimously that the defendant:

(1) During a period of ninety (90) or more days in duration, committed three (3) or more acts of sexual abuse of a child; or

(2) During a period of less than ninety (90) days in duration, committed five (5) or more acts of sexual abuse of a child against at least two (2) different children; and

(3) Committed at least three (3) of the same specific acts of sexual abuse within the specified time period if prosecution is under subdivision (1) and at least five (5) of the same specific acts of sexual abuse within the specified time period if prosecution is under subdivision (2).

(f) The state may charge alternative violations of this section and of the separate offenses committed within the same time period. The separate incidents shall be alleged in separate counts and joined in the same action. A person may be convicted either of one (1) criminal violation of this section, or for one (1) or more of the separate incidents of sexual abuse of a child. The state shall not be required to elect submission to the jury of the several counts. The jury shall be instructed to return a verdict on all counts in the indictment. In the event that a verdict of guilty is returned on a separate count that was included in the notice of separate incidents of sexual abuse of a child and the jury returns a verdict of guilty for a violation of this section, at the sentencing hearing

the trial judge shall merge the separate count into the conviction under this section and only impose a sentence under this section. A conviction for a violation of this section bars the prosecution of the individual incidents of sexual abuse of a child as separate offenses described in the pre-trial notice filed by the state and presented to the jury. A prosecution for a violation of this section does not bar a prosecution in the same action for individual incidents of sexual abuse not identified in the state's pre-trial notice. The state shall be required to elect as to those individual incidents of sexual abuse not contained in the pre-trial notice prior to submission to the jury. A conviction for such elected offenses shall not be subject to merger at sentencing.

(g) Notwithstanding any other law to the contrary, a person convicted of a violation of this section shall be punished by imprisonment and shall be sentenced from within the full range of punishment for the offense, between Ranges II—III.

SECTION 3. Tennessee Code Annotated, Section 40-35-501, is amended by adding the following new subsection (l) and by redesignating all subsequent subsections accordingly:

(l)

(1) There shall be no release eligibility for a person committing continuous sexual abuse of a child as defined § 39-13-533 on or after July 1, 2013 until the person has served the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Such person shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(2) In addition to the punishment authorized by this section, a person sentenced under § 39-13-533 shall, upon release, receive a sentence of community supervision for life pursuant to § 39-13-524.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2013, the public welfare requiring it.